

## § 124.1

- 124.515 Compliance alternative for community health centers, migrant health centers and certain National Health Service Corps sites.
- 124.516 Charitable facility compliance alternative.
- 124.517 Unrestricted availability compliance alternative for Title VI-assisted facilities.
- 124.518 Agreements with State agencies.

### Subpart G—Community Service

- 124.601 Applicability.
- 124.602 Definitions.
- 124.603 Provision of services.
- 124.604 Posted notice.
- 124.605 Reporting and record maintenance requirements.
- 124.606 Investigation and enforcement.
- 124.607 Agreements with State agencies.

APPENDIX TO SUBPART G—INTERIM PROCEDURES AND CRITERIA FOR REVIEW BY HEALTH SYSTEMS AGENCIES OF APPLICATIONS UNDER SECTION 1625 OF THE PUBLIC HEALTH SERVICE ACT

### Subpart H—Recovery of Grant Funds

- 124.701 Applicability.
- 124.702 Definitions.
- 124.703 Federal right of recovery.
- 124.704 Notification of sale, transfer, or change of use.
- 124.705 Amount of recovery.
- 124.706 Calculation of interest.
- 124.707 Waiver of recovery where facility is sold or transferred to a proprietary entity.
- 124.708 Waiver of recovery—good cause for other use of facility.
- 124.709 Withdrawal of waiver.

AUTHORITY: Secs. 215, 1602, 1625, Public Health Service Act (42 U.S.C. 216, 300o-1, 300r), unless otherwise noted.

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### Subpart A—Project Grants for Public Medical Facility Construction and Modernization

#### § 124.1 Applicability.

The regulations of this subpart are applicable to grants under section 1625 of the Public Health Service Act for construction and modernization projects designed to:

(a) Eliminate or prevent imminent safety hazards as defined by Federal, State or local fire, building, or life safety codes or regulations, or

(b) Avoid noncompliance with State or voluntary licensure or accreditation standards.

#### § 124.2 Definitions.

As used in this subpart:

(a) *Act* means the Public Health Service Act, as amended.

(b) *Construction* means construction of new buildings and initial equipment of such buildings and, in any case in which it will help to provide a service not previously provided in the community, equipment of any buildings. It includes architect's fees, but excludes the cost of off-site improvements and, except with respect to public health centers, the cost of the acquisition of land.

(c) *Cost* means the amount found by the Secretary to be necessary for construction or modernization under a project, except that such term does not include any amount found by the Secretary to be attributable to expansion of the bed capacity of any facility.

(d) *Equipment* means those items which are necessary for the functioning of the facility but does not include items of current operating expense such as food, fuel, pharmaceuticals, dressings, paper, printed forms, and housekeeping supplies.

(e) *Facility for long-term care* means a facility (including a skilled nursing care or intermediate care facility), providing inpatient care for convalescent or chronic disease patients who require skilled nursing or intermediate care and related medical services:

(1) Which is a hospital (other than a hospital primarily for the care and treatment of mentally ill or tuberculosis patients) or is operated in connection with a hospital, or

(2) In which such care and medical services are prescribed by, or are performed under the general direction of, persons licensed to practice medicine or surgery in the State.

(f) *Health systems agency* means an agency which has been conditionally or fully designated pursuant to section 1515 of the Act and 42 CFR part 122.

(g) *Hospital* includes general, tuberculosis, and other types of hospitals, and related facilities such as laboratories, outpatient departments, nurses' home facilities, extended care facilities, facilities related to programs for

home health services, self-care units, and central service facilities, operated in connection with hospitals, and education or training facilities for health professional personnel operated as an integral part of a hospital, but does not include any facility furnishing primarily domiciliary care.

(h) *Major repair* means those repairs to an existing building, excluding routine maintenance, which restore the building to a sound state, the cost of which is a least 10 percent of plant value or \$200,000, whichever is greater. *Plant value* means the historic book value of the building at the time of application for assistance under this subpart.

(i) *Medical facility* means a hospital, public health center, outpatient medical facility, rehabilitation facility, or a facility for long-term care.

(j) *Modernization* means the alteration, expansion (excluding expansion which increases bed capacity), major repair, remodeling, replacement, and renovation of existing buildings (including initial equipment thereof), and the replacement of obsolete equipment of existing buildings, including energy conservation projects.

(k) *Outpatient medical facility* means a facility, located in or apart from a hospital, for the diagnosis or diagnosis and treatment of ambulatory patients (including ambulatory inpatients):

(1) Which is operated in connection with a hospital, or

(2) In which patient care of a specialized nature (such as in an eye clinic, dental clinic, or ambulatory surgical center) is provided under the professional supervision of persons licensed to practice medicine or surgery in the State, or in the case of dental diagnosis or treatment, under the professional supervision of persons licensed to practice dentistry in the State, or

(3) Which offers to patients not requiring hospitalization the services of licensed physicians in various medical specialties, and which provides to its patients a reasonably full range of diagnostic and treatment services.

(l) *Public health center* means a publicly owned facility for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices op-

erated in connection with such a facility.

(m) *Quasi-public corporation* means a private, nonprofit corporation which has been formally given one or more governmental powers by a general-purpose unit of government to enable it to carry out its work.

(n) *Rehabilitation facility* means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical evaluation and services, and psychological, social, or vocational evaluation and services, under competent professional supervision, and in the case of which the major portion of the required evaluation and services is furnished within the facility; and either the facility is operated in connection with a hospital, or all medical and related health services are prescribed by, or are under the general direction of persons licensed to practice medicine or surgery in the State.

(o) *Secretary* means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

(p) *State* means any one of the several States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the District of Columbia.

(q) *State health planning and development agency* or *State Agency* means the agency of a State government which has been conditionally or fully designated under section 1521 of the Act and 42 CFR part 123.

(r) *Title* means a fee simple, or such other estate or interest in the project site (including a leasehold on which the rental does not exceed 4 percent of the value of the land) as the Secretary finds sufficient to assure undisturbed use and possession for the purpose of construction or modernization and operation of the project for a period of not less than twenty years.

(s) *Urban or rural poverty area* means a census tract, census county division, or minor civil division, as applicable, in which the percentage of the residents with incomes below the poverty

### § 124.3

level, as defined by the Secretary of Commerce is not less than the percentage derived in accordance with the following sentence. This percentage shall be derived so that the percentage of the total population of the United States residing in all such areas is equal to the percentage of the total population of the United States with incomes below such poverty level, plus five percent.

#### § 124.3 Eligibility.

(a) *Eligible applicants.* A grant under section 1625 may only be made to a State or political subdivision of a State, including any city, town, county, borough, hospital district authority, or public or quasi-public corporation for a project described in paragraph (b) of this section for a medical facility owned, operated, or owned and operated by the State or political subdivision.

(b) *Eligible project.* A grant under section 1625 may be made only for a construction and/or modernization project designed to:

(1) Eliminate or prevent safety hazards which under Federal, State, and/or local fire, building or life safety codes or regulations, will, in the judgment of the Secretary result in one or more of the following:

- (i) Loss of licensure for the facility.
- (ii) Closing of all or a substantial part of the facility,
- (iii) Loss of eligibility for reimbursement under title XVIII or title XIX of the Social Security Act; or

(2) Avoid noncompliance with State licensure or voluntary accreditation standards where noncompliance will, in the judgment of the Secretary, result in one or both of the following:

- (i) Loss of licensure for the facility,
- (ii) Loss of accreditation resulting in loss of eligibility for reimbursement under title XVIII or title XIX of the Social Security Act.

#### § 124.4 Application.

An application for a grant under this subpart must be submitted directly to the Secretary at such time and in such form and manner as the Secretary may prescribe. The application must be executed by an individual authorized to act for the applicant and assume on be-

### 42 CFR Ch. I (10–1–06 Edition)

half of the applicant the obligations imposed by the Act, this subpart, and the terms and conditions of the grant. The application must contain the following:

(a) A description of the site of the project.

(b) A full description, with all appropriate documentation, of:

(1) The imminent safety hazards, licensure and/or accreditation problems of the facility;

(2) The type and amount of assistance sought under this subpart;

(3) The construction of modernization project for which funds are sought, describing how it will remedy the problems described pursuant to paragraph (b)(1) of this section, with a complete schedule for the proposed construction or modernization; and

(4) How failure to remedy the problems described pursuant to paragraph (b) (1) of this section will affect the population served by the facility.

(c) In the case of a modernization project for continuation of existing health services, a finding by the State Agency of the continued need for such services. In the case of a construction or modernization project for new health services, a finding by the State Agency of the need for such services. The finding of need shall be based on the following criteria:

(1) In a State which has a program approved by the Secretary under section 1523(a)(4)(B) of the Act, a State certificate of need program, or a program under section 1122 of the Social Security Act, the State Agency shall use the criteria used in conducting reviews under such program. In a State which has more than one such program, the State Agency shall use the criteria of one of the programs and notify the Secretary of the program criteria used.

(2) In a State which does not have a program approved by the Secretary under section 1523(a)(4)(B) of the Act, a State certificate of need program or a program under section 1122 of the Social Security Act, the State Agency shall base its finding of need on the following criteria:

(i) Whether the proposed project is needed or projected as necessary to meet the needs in the community in